

DOCUMENT RESUME

08129 - [C3408521]

[Protest Alleging Violations of Small Business Requirements of Solicitation and Contract]. B-193073. December 4, 1978. 2 pp.

Decision re: CPI Associates, Inc.; by Milton J. Socclar, General Counsel.

Contact: Office of the General Counsel; Procurement Law I.

Organization Concerned: Department of Commerce; Consad Research Corp.

Authority: 15 U.S.C. 637(b). =4 C.F.R. 20. F.P.R. 1-1.71G-3. B-183648 (1975). B-191941 (1978).

A protester against a contract award under a small business set-aside procurement contended that the awardee violated small business requirements of the solicitation and contract. The protest was untimely since it was filed more than 10 days after the basis for protest was known, and the allegation that the awardee did not comply with solicitation and contract provisions was a matter of contract administration. The allegation that the awardee may not be a small business was a matter for Small Business Administration determination. The protest was accordingly dismissed. (BTW)

DECISION



W. W. Thompson, Jr.
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

8521

FILE: B-193073

DATE: December 4, 1978

MATTER OF: CPI Associates, Inc.

DIGEST:

1. Protest filed more than 10 working days after basis for protest was known is untimely and not for consideration.
2. Allegation that awardee is not in compliance with RFP and contract provision requiring contractor to accomplish maximum amount of subcontracting to small business that it finds consistent with efficient performance of contract is matter of contract administration and not for consideration by GAO.
3. Allegation that awardee under total small business set-aside may not be bona fide small business is matter for conclusive determination by Small Business Administration and will not be considered by GAO.

CPI Associates, Inc. (CPI), has protested award of a contract for a public works investment study to Consad Research Corporation under request for proposals (RFP) A-06-A01-78-001315 issued by the Department of Commerce (Commerce).

The procurement was a total small business set-aside. Additionally, the RFP incorporated Federal Procurement Regulations (FPR) § 1-1.710-3(a) (1964 ed. amend. 153), which states, in part, that:

"(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the contractor finds to be consistent with the efficient performance of this contract."

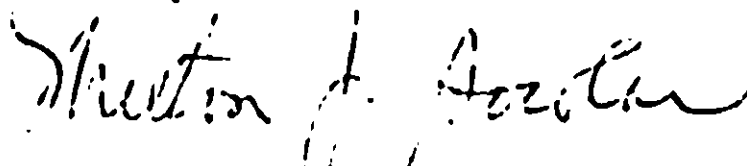
CPI contends that Consad's award of subcontracts to the Urban Institute (UI) and the American Public Works Association (APWA), two large businesses, violates the above-quoted RFP provision. CPI also argues that these awards and the use of several consultants who have been or are affiliated with institutions other than small businesses conflict with the provision for a total small business set-aside.

The notification of award was sent to CPI on August 22, 1978. This notification included a notice of the subcontract awards to UI and APWA. Section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1978), provides that protests must be filed not later than 10 working days after the basis for protest was known. CPI's protest was filed on October 2, 1978, nearly 6 weeks after the notice of award was mailed. Therefore, it appears that the allegations concerning subcontracts to these firms are untimely and not for consideration.

In any event, we have held that since the subcontracting clause applies to the contractor and not offerors, compliance with the clause is a matter of contract administration and will not be reviewed by our Office. PSC Technology, Inc., B-183648, May 27, 1975, 75-1 CPD 316.

It is not clear whether CPI's allegation concerning Consad's use of consultants concerns the subcontracting clause above or is meant to imply that Consad is not a bona fide small business. In either instance, it is not a matter that our Office will review. Compliance with the subcontracting clause, as we discussed above, is a matter of contract administration. The Small Business Administration is designated by law, 15 U.S.C. § 637(b)(6) (1976), to conclusively determine the size status of bidders and our Office will not review such determinations. Martin J. Simko Construction, Inc., B-190941, February 15, 1978, 78-1 CPD 135.

Accordingly, the protest is dismissed.


Milton J. Socolar
General Counsel